

#### REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on February 23, 2007. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112857-424 on the account statement.

In the Office Action, Claims 1 and 3-5 are rejected under 35 U.S.C. §102(e) and Claim 2 is rejected under 35 U.S.C. §103(a). In response, Claim 2 has been canceled. Claims 1 and 5 have been amended. The amendments do not add new matter. In view of the amendments and for at least the reasons set forth below, Applicants believe the rejections are improper and respectfully request that the rejections be withdrawn.

In the Office Action, Claims 1 and 3-5 are rejected under 35 U.S.C. §102(e) as being anticipated by Japanese Patent No. 2002-075368 to Yamaura ("*Yamaura*"). In view of the amendments, Applicants respectfully submit that the rejection should be withdrawn.

Currently amended Claim 1 recites, in part, a positive active material having one or more particles of lithium nickelate and an olivine compound, wherein a content of the olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%. Similarly, currently amended Claim 5 recites, in part, a non-aqueous electrolyte secondary battery having a positive active material having one or more particles of lithium nickelate and an olivine compound, wherein a content of the olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%.

In contrast, Applicants respectfully submit that *Yamaura* fails to disclose each and every element of the presently amended claims. For example, and as admitted by the Patent Office, *Yamaura* fails to disclose a positive active material wherein a content of an olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%. See, Office Action, page 3, lines 16-17.

For the reasons discussed above, Applicants respectfully submit that *Yamaura* fails to disclose each and every element of the presently amended Claims and, therefore, Claims 1, 5 and 3-4 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicants respectfully request that the rejection of Claims 1 and 3-5 under 35 U.S.C. §102(e) be reconsidered and the rejections be withdrawn.

In the Office Action, Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Yamaura* in view of U.S. Patent No. 6,156,459 to Negoro et al. ("*Negoro*"). In response, Claim 2 has been canceled and the limitations of Claim 2 have been added to independent Claims 1 and 5.

As discussed herein above, the elements of Claim 2 have been added to independent Claims 1 and 5. Therefore, currently amended Claim 1 recites, in part, a positive active material having one or more particles of lithium nickelate and an olivine compound, wherein a content of the olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%. Similarly, currently amended Claim 5 recites, in part, a non-aqueous electrolyte secondary battery having a positive active material having one or more particles of lithium nickelate and an olivine compound, wherein a content of the olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%.

As discussed herein above, and as admitted by the Patent Office, *Yamaura* fails to disclose wherein a content of the olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%. See, Office Action, page 3, lines 16-17. Similarly, Applicants respectfully submit that *Negoro* also fails to disclose wherein a content of the olivine compound in the positive active material ranges from about 5 wt% to about 50 wt%.

The Patent Office asserts that *Negoro* teaches that the conducting agent of the positive-active material of a secondary battery should be between 6 and 50 wt%. See, Office Action, page 3, lines 18-19. However, Applicants respectfully submit that the Patent Office mischaracterizes the disclosure of *Negoro*. Specifically, while *Negoro* discloses that an amount of a conducting agent to be added to the composition layer is preferably 6 to 50 wt%, see, *Negoro*, col. 30, lines 49-50, Applicants respectfully submit that the "conducting agent" of *Negoro* referred to by the Patent Office is not equivalent to Applicants' content of an olivine compound claimed in Claim 2 and currently amended Claims 1-5.

For example, in Example 1 of the specification, Applicants describe the production of a positive electrode and disclose that after a positive active material including, for example, a lithium nickelate and an olivine compound, has been produced, a positive mix including, for example, the positive active material and 5 wt% of acetylene black as a conductive agent, is

mixed to form a positive electrode. See, specification, page 18, line 15-page 19, line 23. Applicants respectfully submit that it is the olivine compound content of the positive active material that was claimed in Claim 2 and is claimed in currently amended Claims 1 and 5, not the content of the acetylene black conducting agent.

In contrast, the portion of *Negoro* that the Patent Office cites in the Office Action as disclosing a content of an olivine compound in the positive active material ranging from about 5 wt% to about 50 wt% actually refers to a content of a conducting agent added to the positive active material. See, *Negoro*, col. 30, lines 49-50. Moreover, *Negoro* even discloses that acetylene black may be used as a conducting agent to be applied to the positive active material. See, *Negoro*, col. 30, line 38. As such, *Negoro* fails to disclose or even suggest that a content of an olivine compound in the positive active material ranges from about 5 wt% to about 50 wt% as is required, in part, by currently amended Claims 1 and 5.

For the reasons discussed above, Applicants respectfully submit that the cited references do not teach, suggest, or even disclose all of the elements of Claim 2 or presently amended Claims 1 and 5 and Claims 3-4 that depend from Claim 1. As such, *Yamaura* and *Negoro* fail to render the claimed subject matter obvious. Therefore, Applicants respectfully request that the rejection of Claim 2 under 35 U.S.C. §103(a) be reconsidered and the rejections be withdrawn.

Accordingly, Applicants believe that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

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